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06/10

THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: June 4, 2008 REPORT NO: 08/084  
ATTENTION: Council President Scott Peters and City Council  
Agenda of June 10, 2008  
SUBJECT: Fluoridation Funding Offer from First 5 Commission  
REFERENCE: None

**REQUESTED ACTION:**

1. Acknowledge receipt of letter from First 5 Commission offering up to \$3,927,016 for the purpose of fluoridating the public water supply in the City of San Diego.
2. Authorize the Mayor or his designee to begin negotiations with First 5 Commission to determine the funding mechanism, costs, schedule and other elements necessary to implement the fluoridation of the City water supply.

**STAFF RECOMMENDATION:** Approve the requested action.

**SUMMARY:** The City has received a letter from the First 5 Commission of San Diego County (Commission) offering up to \$3,927,016 for the purpose of fluoridating the public water supply in the City of San Diego. The Commission was established by the California Children and Families Act in 1998 and is responsible for implementing the Act by, among other activities, funding programs and activities that promote early childhood development from the prenatal stage to age five. The Commission's effort are funded through revenue generated as a result of a tax imposed on all tobacco products. The Commission's offer is for full funding of the capital costs and up to two years of operating expenses necessary to implement fluoridation at each of the City's three water treatment plants.

**Background**

In 1995, State law amended the California Safe Drinking Water Act to require water providers with over 10,000 service connections (which includes the City), to fluoridate their water supplies. However, a public water system is exempt from fluoridating until sufficient outside funding is available. An outside source is generally defined as a source other than rate payers, bond holders or any other fees levied by the water system. The State legislation is preemptive of any local ordinances, regulations or initiatives. Both the California Attorney General and the Office of the City Attorney opined that when sufficient funding becomes available, San Diego Municipal Code Section 67.0101, which prohibits the City from fluoridation, would be preempted by state law.

In light of the current funding offer from the Commission, the City Attorney's Office has concluded the exemption under which the City has operated would no longer apply. Moreover, the State Department of Public Health (DPH), the agency empowered to enforce provisions of the State law, has issued a letter to the City acknowledging the offer of funding from the Commission and has formally withdrawn the City's exemption from fluoridation (see attached). This action by the DPH triggers the start of a two-year timeline the City is required to follow for the design and construction of the necessary infrastructure for fluoridation.

Upon completion of construction, the City will be required to submit to DPH an application to amend the current water supply permit to allow for the introduction of fluoride. DPH will review the City's application, and, after a public hearing, will either deny or approve the application, with specific requirements regarding future monitoring, recordkeeping, reporting and notification procedures.

#### Current Fluoridation within the City

Currently, the Water Department does not fluoridate water for its customers. However, last summer, the Metropolitan Water District of Southern California (MWD), the wholesale water supplier for Southern California, including San Diego, announced that it would begin fluoridating treated water delivered to all its customers. Only 9 percent of the City's treated water supply is provided by MWD, through the County Water Authority. The remaining 91 percent of treated water is supplied by the City's three treatment plants. Due to operational constraints and maintenance requirements of the City's water distribution system, the City must continue to receive imported treated water from MWD and CWA. As a result, portions of the City began receiving fluoridated water in December 2007, when MWD's Skinner Plant began fluoridation.

As part of the MWD fluoridation action, region-wide public outreach was performed by impacted water agencies, including the City of San Diego. In addition, the City developed an interactive Web site for the public which outlined the level of fluoridation expected within the City by zip code. In this manner, individual customers have been able to tell how much fluoride would be expected based upon MWD's fluoridation. A similar public outreach would be performed as a result of the current offer from the Commission

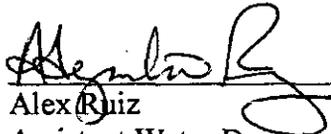
FISCAL CONSIDERATIONS: None associated with this action. The resulting contract with the Commission will specify that funding for full design/construction costs and 2 years of operation and maintenance will be provided by the Commission. Negotiations will include establishing the mechanism for "front funding" project expenditures by the Commission; developing the public notification and outreach components required to inform citizens of the forthcoming fluoridation effort; and finalizing project costs, schedules and project management components for the design and construction of fluoride infrastructure at each plant. The City need not operate the fluoridation system once it is installed unless outside funds are thereafter provided in any fiscal year to cover noncapital and maintenance costs.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

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COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None with this action. As part of the implementation of this project, the City will provide a variety of public notifications to rate payers, citizens, hospitals, dental associations, and other stakeholders.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: All customers of the City of San Diego Water Department, public health professionals, rate payers, and the Department of Public Health.

  
\_\_\_\_\_  
Alex Ruiz  
Assistant Water Department Director

 5/28/08  
\_\_\_\_\_  
J. M. Barrett  
Public Utilities Director

AR

Attachments:

1. First 5 Commission Letter – Funding Offer (2/29/08)
2. Department of Public Health Letter - Removal of Fluoridation Exemption (5/13/08)

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REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY) 331  
06/10

TO:  
CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):  
Water Department

5/27/08

Fluoridation Funding Offer From First 5 Commission

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)  
Alex Ruiz, MS 401, 619.533.6692

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	41500		
DEPT.	760		
ORGANIZATION			
OBJECT ACCOUNT			
JOB ORDER			
C.I.P. NUMBER			
AMOUNT	\$0.00		

9. ADDITIONAL INFORMATION / ESTIMATED COST:  
No cost associated with this action.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	5/27/08	8	DEPUTY CHIEF	<i>[Signature]</i>	5/28/08
2	EAS	<i>[Signature]</i>	5/28/08	9	COO	<i>[Signature]</i>	5/28/08
3	LIAISON OFFICE	<i>[Signature]</i>	5/28/08	10	CITY ATTORNEY	<i>[Signature]</i>	5/29/08
4				11	ORIGINATING DEPARTMENT		
5					DOCKET COORD: _____	COUNCIL LIAISON: _____	
6					<input checked="" type="checkbox"/> COUNCIL PRESIDENT <i>[Signature]</i>	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION	
7					<input type="checkbox"/> REFER TO: _____	COUNCIL DATE: 6/10/08	

11. PREPARATION OF:  RESOLUTION(S)  ORDINANCE(S)  AGREEMENT(S)  DEED(S)

1. Acknowledge receipt of letter from First 5 Commission offering up to \$3,927,016 for the purpose of fluoridating the public water supply in the City of San Diego.
2. Authorize the Mayor or his designee to begin negotiations with the First 5 Commission to determine the funding mechanism, costs, schedule and other elements necessary to implement the fluoridation of the City's public water supply.

11A. STAFF RECOMMENDATIONS:  
Adopt the Resolution

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): All

ENVIRONMENTAL IMPACT: This project is exempt from CEQA pursuant to Section 21080.26, which provides exemption for "minor alternations to utilities" necessary to comply with Title 22 California Code of Regulations (CCR) Section 64433 (California Fluoridation Regulation) and Health and Safety Code 11610.

- ATTACHMENTS:
1. First 5 Commission Letter- Funding Offer (2/29/08)
  2. Department of Public Health Letter- Removal of Fluoridation Exemption (5/13/08)

OTHER ISSUES: None

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**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: May 27, 2008 REPORT NO:  
ATTENTION: Council President Peters and City Council  
ORIGINATING DEPARTMENT: Water Department  
SUBJECT: Fluoridation Funding Offer from First 5 Commission  
COUNCIL DISTRICT(S): All  
CONTACT/PHONE NUMBER: Alex Ruiz 619.533.6692

**REQUESTED ACTION:** 1. Acknowledge receipt of letter from First 5 Commission offering up to \$3,927,016 for the purpose of fluoridating the public water supply in the City of San Diego. 2. Authorize the Mayor or his designee to begin negotiations with First 5 Commission to determine the funding mechanism, costs, schedule and other elements necessary to implement the fluoridation of the City water supply.

**STAFF RECOMMENDATION:** Approve the Requested Action

**EXECUTIVE SUMMARY:** The City has received a letter from the First 5 Commission (Commission) of San Diego County offering up to \$3,927,016 for the purpose of fluoridating the public water supply in the City of San Diego. The Commission was established by the California Children and Families Act in 1998 and is responsible for implementing the Act by, among other activities, funding programs and activities that promote early childhood development from the prenatal stage to age five. The Commission's offer is for full funding of the capital costs and up to two years of operating and maintenance expenses necessary to implement fluoridation at each of the City's three water treatment plants.

In 1995, State law amended the California Safe Drinking Water Act to require water providers with over 10,000 service connections (which includes the City) to fluoridate their water supplies. However, a public water system is exempt from fluoridating until sufficient outside funding is available. An outside source is generally defined as a source other than rate payers, bond holders or any other fees levied by the water system. This State legislation is preemptive of any local ordinances, regulations or initiatives. Both the California Attorney General and the Office of the City Attorney opined that when sufficient funding became available, San Diego Municipal Code Section 67.0101, prohibits the City from fluoridation, would be preempted by state law.

In light of the current funding offer from the Commission, the City Attorney's Office has concluded that the exemption under which the City has operated would no longer apply. Moreover, the State Department of Public Health (DPH) has issued a letter to the City acknowledging the offer of funding from the Commission and has formally withdrawn the City's exemption from fluoridation. This action by the DPH triggers the start of a two year timeline the City is required to follow for the design and construction of the necessary infrastructure for fluoridation.

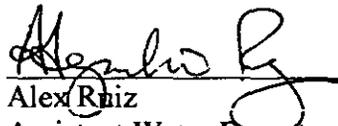
**FISCAL CONSIDERATIONS:** None associated with this action. The resulting contract with the Commission will specify that funding for full design/construction costs and 2 years of

operation and maintenance will be provided by the Commission. Negotiations will include establishing the mechanism for "front funding" project expenditures by the Commission; developing the public notification and outreach components required to inform citizens of the forthcoming fluoridation effort; and finalizing project costs, schedules and project management components for the design and construction of fluoride infrastructure at each plant. The City need not operate the fluoridation system once it is installed unless outside funds are thereafter provided in any fiscal year to cover noncapital and maintenance costs.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None with this action. As part of the implementation of this project, the City will provide a variety of public notifications to rate payers, citizens, hospitals, dental associations, and other stakeholders.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: All customers of the City of San Diego Water Department, public health professionals, rate payers, and the Department of Public Health.

  
\_\_\_\_\_  
Alex Ruiz  
Assistant Water Department Director

  
\_\_\_\_\_  
J. M. Barrett  
Public Utilities Director

RESOLUTION NUMBER R- \_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION ACKNOWLEDGING FLUORIDATION  
FUNDING OFFER FROM FIRST 5 COMMISSION; AND  
TAKING RELATED ACTIONS.

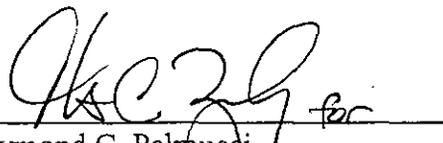
BE IT RESOLVED, that the San Diego City Council acknowledges the receipt of correspondence from the First 5 Commission offering an amount not to exceed \$3,927,016 for the purpose of fluoridating the public water supply in the City of San Diego.

BE IT FURTHER RESOLVED, that the Mayor or his designee is hereby authorized and empowered to enter into negotiations, for and on behalf of the City, with the First 5 Commission to determine the funding mechanism, costs, schedule and other elements necessary to implement fluoridation of the City public water supply.

BE IT FURTHER RESOLVED, that this action is exempt from the California Environmental Quality Act [CEQA] pursuant to California Public Resources Code Section 21080.26, which provides exemption for "minor alterations to utilities" necessary to comply with Title 22 California Code of Regulations [CCR] Section 64433 (California Fluoridation Regulation) and Health and Safety Code 11610.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
\_\_\_\_\_  
Raymond C. Palmucci  
Deputy City Attorney

RCP:js  
05/22/2008  
Or.Dept: Water  
R-2008-1090

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor



First 5 Commission of San Diego County  
Improving the lives of children 0 to 5

**COMMISSION MEMBERS**  
GREG COX - Chairman

CAROL SKILJAN - Vice Chair

CHARLENE TRESSLER - Secretary

JEAN M. SHEPARD - Commissioner

DR. WILMA J. WOOTEN - Commissioner

LAURA SPIEGEL - Executive Director

February 29, 2008

Council President Scott Peters  
City of San Diego  
202 C Street, MS #10A  
San Diego, CA 92101

Dear Council President Peters:

On behalf the First 5 Commission of San Diego County (Commission), I am offering the City of San Diego up to \$3,927,016 for the purpose of fluoridating its public water supply. These funds will support the costs of the capital equipment required, and up to two (2) years of operations and maintenance (O&M) expense.<sup>1</sup>

The First 5 Commission of San Diego County was established by the California Children and Families Act (Proposition 10), passed by California voters in November 1998. This statewide ballot initiative imposed an additional tax on all tobacco products. The revenue generated from this tax is used to fund programs and activities that promote early childhood development from the prenatal stage to age five. The Commission is responsible for implementing the Act in San Diego County. The Commission's vision is that every child in San Diego County will enter school ready to learn.

Last year as Chairman of the Commission, I directed staff to explore the potential of making an investment in community water fluoridation in an effort to improve oral health of local children. On November 5, 2007, after several months of research and community input, the Commission voted unanimously to allocate \$5,670,137 for community water fluoridation. This action designated funds to water districts in San Diego County to construct and equip facilities, and for related costs to operate and maintain the equipment for the purpose of fluoridation.

The California Endowment recently became a funding partner with the Commission to implement community water fluoridation in San Diego County. On February 14, 2008, The California Endowment awarded the Commission a grant in the amount of \$1,000,000 for this purpose, increasing the total amount of funds available for this project to \$6,670,137.

The Commission and The California Endowment are making this large investment in fluoridation because tooth decay is one of the most common and preventable diseases in infants and young

<sup>1</sup> The capital cost estimate was derived from the City's 2006 estimates submitted to the State Department of Public Health with 10% inflation based on the Construction Cost Index (CCI).

children. Yet many children in San Diego County, and throughout California, suffer from this chronic infectious disease. A recent study conducted by the Dental Health Foundation found that by the time California children enter kindergarten, more than half have already experienced dental decay, 28 percent have untreated decay and 19 percent have rampant decay. Only 55 percent of two to five year olds in San Diego County have ever had a dental visit and 28 percent do not have dental insurance. Data from Rady Children's Hospital suggest that approximately 150,000 pre-school children in San Diego County suffer from early childhood dental disease.

The U.S. Surgeon General reports that community water fluoridation remains one of the great public health achievements of the 20<sup>th</sup> Century. Community water fluoridation is the most cost-effective dental disease prevention program available, especially for large, multiethnic populations with disparities in health conditions. Decades of studies demonstrate that fluoridation contributes to the lasting protection of the tooth, and that water fluoridated at the optimum level is safe and effective in reducing cavities, especially among young children.

The Commission has designated the City of San Diego to be the first water district to receive funds to implement community water fluoridation, as it is the municipality that serves the largest number of children ages 0-5 in San Diego County. It is our intent to provide the City of San Diego Water Department with two years of O&M funding, which exceeds the one-year statutory requirement. This will give the City time to incorporate the provision and costs into its ongoing operations. The balance of Commission funds will be used to fund community water fluoridation at additional water districts in the County of San Diego.

#### **Legal Considerations**

California Health and Safety code section 116410 requires all water districts to fluoridate its water supply where funds are offered to cover the capital costs and one year of operations and maintenance. This State legislation is preemptive of any local ordinances, regulations or initiatives. It is the intent of the First 5 Commission of San Diego County to provide the City of San Diego Water Department with sufficient funds to trigger the provisions in this law.

#### **Status of Community Water Fluoridation in San Diego County**

Several water districts serving the San Diego County region purchase treated water from the Metropolitan Water District of Southern California (MWD); most of the residents served by these water districts receive water with optimal levels of fluoride.

The City of San Diego is the largest municipality in the country without fluoridated water. Some of the City's water has natural fluoride elements and/or fluoride added by a water supplier prior to its distribution to the City's water treatment plants. This creates a situation where the City's water has varying, suboptimal levels of fluoride throughout its water supply. As a result of this irregularity, parents are not able to determine the amount of fluoride their children are ingesting on a day-to-day basis. Parents who use fluoride supplements to safeguard their children's teeth run the risk of administering too much fluoride to their children, which can contribute to a condition called dental fluorosis that may affect the appearance of children's teeth.

Dental health professionals and community stakeholders recommend that the water supply throughout San Diego County is treated with optimal levels of fluoride. This is the best way to minimize the risk of fluorosis and ensure consistent, optimal levels of fluoridation throughout the region, maximizing the benefit for children. Please note that the California Department of Public Health, on October 1, 2007, issued a notice to the County's medical and dental health providers

recommending they suspend prescription fluoride supplements for one year in areas served by the Metropolitan Water District of Southern California.)

#### **Preliminary Cost Estimates to Fluoridate the City of San Diego Water Supply**

Assembly Bill 733 (Alpert) requires that each water district with more than 10,000 connections submit a report every ten years to the California Department of Public Health estimating the capital costs of fluoridating its water supply. In January 2006, the City of San Diego Water Department submitted its most recent estimates to the state totaling \$2,551,000 for the combined costs to upgrade the Alvarado, Miramar and Otay water treatment plants (see Attachment A).

The Commission estimates that the City's 2008 capital costs, using the figures cited in the above referenced report and adjusted by 10 percent for inflation (based on Construction Cost Index), totals \$2,806,100. A further adjustment for contingencies, at 15 percent of the 2008 estimate, increases the capital costs by \$420,915, for total estimated capital costs of up to \$3,227,016.

Recently, the City of San Diego Water Department provided the Commission's technical advisor, Richard Brady & Associates (RBA), an estimate for two years of operations and maintenance costs inclusive of all three treatment plants totaling \$700,000. Using these calculations, the Commission estimates the total cost to implement and provide community water fluoridation in the City of San Diego for the initial two years is up to \$3,927,016, which includes 2006 capital expenses adjusted for inflation and contingencies, and two years of O&M costs.

The following table provides the detail of this estimate:

#### **Itemized Calculation of Estimated Capital and O&M Costs**

<b>Description</b>	<b>2006 City Estimate to State</b>	<b>2008 Estimate (2006 Estimate w/ 10% Inflation)</b>	<b>2008 Estimate w/ 15% Contingency</b>
Alvarado	\$901,000	\$991,100	\$1,139,765
Miramar	\$923,000	\$1,015,300	\$1,167,596
Otay	\$727,000	\$799,700	\$919,655
<b>Subtotal - Capital</b>	<b>\$2,551,000</b>	<b>\$2,806,100</b>	<b>\$3,227,016</b>
O&M (2 Years)	\$700,000	\$700,000	\$700,000
<b>Total - Capital &amp; O&amp;M</b>	<b>\$3,251,000</b>	<b>\$3,506,100</b>	<b>Up to \$3,927,016</b>

It is the intent of the Commission to support the full costs of fluoridating the City of San Diego's water supply for two years. These cost estimates are preliminary and will be verified or adjusted during the contract negotiation process. The Commission's technical consultant, RBA, is currently conducting an objective study to verify the capital and O&M costs of all water districts in the County that do not have the capacity to implement optimal fluoridation. The study will be completed in April 2008 and its results will provide substantial detail, and a comprehensive cost estimate that takes into account current prices, inflation and contingencies for implementing water fluoridation at the City's treatment plants.

#### **Contracting Phase**

The Commission intends to negotiate a contract with the City of San Diego with suggested terms that include a budget and scope of work for full implementation of community water fluoridation at the

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City's water treatment plants. The contract may also include the amount of total funds available for the project, and provide an allowance for additional funds if the costs are fully justified.

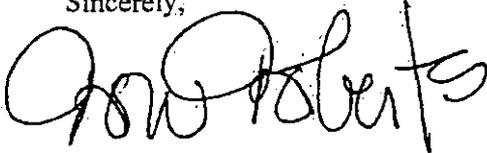
The Commission's funds can only be used to supplement existing levels of service. Supplantation of existing services is prohibited by the California Revenue and Taxation Code section 30131.4, which provides that Commission funds may only be used to supplement existing levels of service and not to fund existing levels of service. Section 30131.4 further provides that Commission funds may not be used to "supplant state or local General Fund money for any purpose." It is the intent of the Commission to ensure that the Commission complies with Section 30131.4.

**Next Steps**

The First 5 Commission of San Diego respectfully requests the City's acknowledgement of this offer. Further, the Commission requests that City staff be directed to work with the First 5 Commission to draft and solidify a contract between the First 5 Commission and the City of San Diego to fluoridate its water supplies using Commission funds for the capital equipment required, and 2 years of operations and maintenance.

The First 5 Commission of San Diego looks forward to working with the City of San Diego to improve the oral health and overall health of young children and their families. Please contact Laura Spiegel, Executive Director of the First 5 Commission of San Diego, at (619) 230-6471 for questions and additional information.

Sincerely,

A handwritten signature in black ink that reads "Ron Roberts". The signature is written in a cursive, flowing style.

County Supervisor Ron Roberts  
Past Chairman - 2007  
First 5 Commission of San Diego

cc: Mayor Jerry Sanders, City of San Diego  
Dr. Mark B. Horton, Director, California Department of Public Health



MARK B HORTON, MD, MSPH  
Director

State of California—Health and Human Services Agency  
California Department of Public Health



ARNOLD SCHWARZENEGGER  
Governor

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RECEIVED

MAY 21 2008

WATER DEPARTMENT  
DIRECTOR

May 13, 2008

Mr. Jim Barrett  
Water Department Director  
City of San Diego  
600 B Street, Suite 400  
San Diego, Ca 92101-4514

Dear Mr. Barrett:

**CITY OF SAN DIEGO, SYSTEM NO. 3710020  
REMOVAL OF FLUORIDATION EXEMPTION**

California Department of Public Health (CDPH) - San Diego District office was contacted by Mr. Ray Palmucci, Deputy City Attorney, on March 17, 2008 regarding the First 5 Commission of San Diego County's (First 5) commitment to provide funding for fluoridation equipment and two years of operation and maintenance costs for the City of San Diego's (City) surface water treatment plants, Miramar, Alvarado and Otay plants.

Per the First 5's enclosed letter dated February 29, 2008 from Ron Roberts, Past Chairman-2007 of First 5 Commission, the City has officially been offered adequate funding to initiate fluoridation of the City's water system. CDPH is hereby stating that sufficient funds to fluoridate the City's water system have been identified. Section 64433, Article 4.1, Chapter 15, Title 22, California Code of Regulations, requires that a fluoridation system be installed if CDPH identifies a source of sufficient funds to cover capital and any associated costs necessary to install such a system. These regulations have allowed an exemption from fluoridation to any water system that did not have sufficient funds from a source identified by CDPH to cover the capital and noncapital operation and maintenance costs to fluoridate.

This exemption is now removed and therefore the City must install all equipment, control, and reliability features necessary to provide fluoridation within two years of the date of this letter. Please submit a draft Implementation Plan for our review by July 1, 2008. Please submit a draft Construction Schedule by September 2, 2008. CDPH acknowledges that the City must negotiate a contract with the First 5, the lead time of which is difficult to forecast. In the event that contract negotiations effect the above submittal dates, please bring this to our attention immediately.

If you have any questions regarding this letter, please contact me at (619) 525-4159.